(1)
Supreme Court, U.S.
FILED
AUG 5- 2010
OFFICE OF THE CLERK

Docket No. 10-186

In The
SUPREME COURT OF THE UNITED STATES

LAURENCE HALSTEAD III,
Petitioner,

v.

Government Employees Insurance Co. (GEICO) also known as GEICO Financial Services Company, et al.,
Respondents.

On Petition for Writ of Certiorari
To the United States Court of Appeals
For the District of Columbia Circuit

PETITION FOR WRITE OF CERTIORARI

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QUESTIONS PRESENTED

(I) Will the disharmony between circuits on the meaning, interpretation and application of Federal Rule of Civil Procedure 25 be reconciled?

(ii) Is abuse of the controlling prescribed procedure for the substitution of a deceased party under Federal Rule of Civil Procedure 25(a) an abuse of procedure so as to be an actionable tort?

(iii) Under Federal Rule of Civil Procedure 25(a) does the agency of a counsel survive the death of the principal and client contrary to established and ancient law?

(iv) Will the Rule of Law in the nation's capital be preserved so as to protect the rights of an individual litigant?

PARTIES

Petitioner:

Laurence Halstead III
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Arlington, VA 22201-2312
(703) 907-9001

Respondents:

Government Employees Insurance Co. (GEICO), a/k/a GEICO Financial Services Co.

(Represented below by)

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TABLE OF CONTENTS

Questions Presented	i
Parties	ii
Table of Contents	iii
Table of Authorities	iv
Citation Statement and Jurisdictional Statement	1
STATEMENT OF THE CASE	1
ARGUMENT	6
Certificate of Service	

TABLE OF AUTHORITIES

CASES	PAGE(S)
Atkins v. City of Chicago, 547 F.3d 869 872, 874 (7th Cir.2008)	8
Athridge v. Aetna Casualty & Surety Co., 351 F.3d 1166, 1176 (D.C.Cir.2003)	8
Hunt v. Rousmaneir's Administrators, 21 U.S. 174, 5 L.Ed. 589, 8 Wheat 174 (1823) (Opinion per Marshall, C.J.)	8
McSurely v. McClellan, 753 F.2d 88 (D.C.Cir.1985)	8
Rende v. Kaye, 415 F.2d 983 (D.C.Cir.1969)	6
Unicorn Sales, Inc. v. Banerjee, 138 F.3d 467, 469-70 (2nd Cir.1998)	6
RULES, STATUTES AND TREATESIS	
District of Columbia Code, § 12-102	1, 6
Fed. R. Civ.P. Rule 25	1,2,4,5,6
District of Columbia Consumer Protection Procedures Act D.C. Code § 28-3901 *et seq*	1,4,5,8

(d)

There are no reported opinions.

(e) BASIS FOR JURISDICTION OF THIS COURT

(i) The date of the judgment and order sought to be reviewed is December 17, 2009. Reconsideration was sought and a hearing *en banc* suggested. Both were denied on May 7, 2010.

(f) STATUTES AND REGULATIONS

D.C. Code § 12-102. Fed.R.Civ.P. 25. D.C. Code § 28-3901 *et seq.* See Appendix for text.

(g) STATEMENT OF THE CASE

Petitioner was injured badly in a rear-end auto collision in the District of Columbia. His spine was permanently damaged by the breaking of a disc and the collision also triggered a latent condition of Multiple Scleroses (MS) with which he is now saddled for the rest of his life. He filed suit for his injuries in the Superior Court of the District of Columbia. The defendants were, first-named, Government Employees Insurance Company (GEICO) and the striking driver, named Barber. By coincidence GEICO was both the primary insurance carrier of the striking driver, Barber, with a policy of $100,000. but also had an Under-insured (UIM)

policy, in an amount of $300,000 on the car that petitioner was driving, which belonged to a good friend, who was a passenger in the front seat when the collision occurred. Instead of moving to dismiss until the case against the striking driver was resolved and then seeing if there was an amount over the primary coverage awarded so as to trigger the UIM coverage as is normally done, GEICO chose to participate in the case as a completely adversary defendant from the outset.

During the course of the litigation the striking driver, Barber, died of cancer. (Appx. 23,¶43) This left GEICO in the case representing itself but instead of properly notifying the petitioner according to its obligations under the UIM coverage GEICO chose instead to engage in deception by not only failing to reveal Barber's death to the petitioner or his friend, the UIM policy holder but by actively representing in court filings that Barber was alive when he was in fact dead. (Appx 24, ¶45, 46) During this period the former attorney for Barber, whose authority to act as such terminated upon the death of Barber by operation of law, continued to claim to be representing his dead principal Thus GEICO had two attorneys in the case claiming to represent two different defendants but in fact was only representing itself.

Finally, after months, the attorney who had been representing the dead man, Barber, filed what he called a Suggestion of Death announcing for the first time the death of Barber. (Appx 24, ¶47) He had no authority to make this filing which, under Rule 25 can only be filed by an heir or designee or personal

representative or some other person with actual authority to represent the dead man. Further, contrary to Rule 25 law in the District of Columbia as set out by decisions of the United States Court of Appeals for the District of Columbia Circuit, the so-called Suggestion of Death did not set out any proper successor to the deceased defendant Barber. In fact, even after the filing of this document, for over a year thereafter, the attorney who had represented Barber before Barber's death (pursuant to GEICO's contract with the deceased) continued to make filings as if he still had authority to represent the dead man. (Appx. 24, ¶50) So it continued to be the case that the false representation was being made that Barber's original attorney was still representing Barber, the dead man. But in fact the only party being legally represented as a defendant was GEICO. (Appx. 26, ¶52) It is important to note that in the District of Columbia, by statute, Federal Rule of Civil Procedure 25 rather than the local rule 25 governs all proceedings, including those in the municipal court.

This activity by GEICO caused months and months of delay, over a year all told. (Appx 28, ¶60) This delay caused great damage to the petitioner. During this period, among other things, GEICO had its attorney filed a motion to dismiss the petitioner's case altogether, based on the purported lapse of 90 days after the filing of a proper Suggestion of Death. (Appx. 27, ¶58, Appx 28, ¶59) This was despite the fact that the Superior Court judge had ordered a pause in the litigation. Thus petitioner suffered considerable damage to his person, in terms of seeking medical treatment and to a valuable

business property that came under attack from the authorities in the town in Pennsylvania where it was located, all because of the delay.

Though no fault of his own petitioner lost his counsel in the Superior Court case and had bad luck in finding a replacement. Ultimately he obtained counsel who, against his interests and desire, settled the case in a hurry for only the primary coverage, despite his earlier offers within the cumulative coverage. In settling the case petitioner carefully signed a release which only released GEICO from liability from the actual physical injury resulting from the rear-ending and personal injuries growing out of those injuries. (Appx. 35)

Petitioner then brought suit in the United States District Court for the District of Columbia based on diversity against GEICO for abuse of process, malicious use of process, and breach of its duties to him under the UIM coverage, including for violation of the D. C. Consumer Protection Procedures Act, which the U.S. Court of Appeals for the District of Columbia Circuit has pointed out, applies to an authorized guest driver and which provides for treble damages and counsel fees plus punitive damages. He also sued the attorney and his firm who purported to be representing the dead man when in fact they were only representing GEICO as a matter of law during the period of delay and attempted dismissal. (Appx. 10)

The defendants moved to dismiss. Those motions were granted without any analysis of the actual release. (Appx. 03, 04) Nor was there any analysis of

the abuse of the substitution process or of the applicability of the D. C. Consumer Protection Procedures Act. Petitioner took an appeal to the United States Court of Appeals. It granted motions by GEICO and its attorney and his firm for summary affirmance (Appx. 1) also without the analyses avoided by the lower court, not even of its own controlling decisions on Rule 25 cited by petitioner. This petition ensues.

* * * *

(ii) The basis for the jurisdiction in the U.S. District Court was diversity of citizenship and the petitioner also contends that his treatment there raises an issue of lack of due process in the treatment that he received under Rule 25.

ARGUMENT

The reason that the Court should accept this petition is that there is a split between the circuits on the interpretation of Federal Rule of Civil Procedure 25 concerning the procedure and practice of substitution of a party when a party to litigation dies during the course of that litigation, particularly between the District of Columbia Circuit and the Second Circuit. See *Rende v. Kaye*, 415 F.2d 983 (D.C.Cir.1969) and *McSurely v. McClellan*, 753 F.2d 88 (D.C.Cir.1985) as opposed to *Unicorn Sales, Inc. v. Banerjee*, 138 F.3d 467, 469-70 (2nd Cir.1998). Moreover there is a point here that this Court needs to straighten out involving the nation's capital, where the rule of law should be particularly upheld. By statute the District of Columbia has adopted the Federal Rule concerning substitution of parties in its courts in the place of its similar local rule and decreed by that statute that in its local courts the federal rule for substitution of parties shall be followed. District of Columbia Code, § 12-102. In turn the United States Court of Appeals for the District of Columbia Circuit in its decisions has set out procedures which must be followed in substituting a new party for a party who has died during litigation. These procedures are clearly processes of the court. Yet here those processes were greatly distorted and abused to achieve precisely the opposite result that the rule contemplates under the D.C. Circuit's own opinions and still the lower court here refused to consider that process as a process of the court and the court of appeals adopted that

avoidance of what was at issue without analysis or examination.

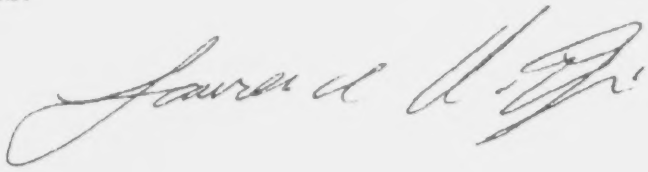
It is important for this Court, in order to preserve the effectiveness of the federal rules, to examine what was done here and make clear that the substitution process is a process of the courts which cannot be freely abused as it was here. That is particularly true in this case where the United States Court of Appeals for the District of Columbia Circuit has in its opinions specifically described the actions taken here by the respondents as an abuse of its processes by referring to them as a "tactical maneuver" to place upon a plaintiff a burden that is not his and yet has refused to apply and uphold its own opinions in that regard. See *Rende v. Kaye, supra*, 415 F.2d at 985-86. If a "tactical maneuver" which a court says is not legal and not in accordance with a rule is not an abuse of the process established by the rule in question than it is difficult to conceive what is such an abuse of that process. Because of the importance of Rule 25 of the Federal Rules of Civil Procedure generally in the administration of the federal courts it is important for this court to issue the petition in this case and make clear that its processes cannot be abused with impunity.

A further point in favor of the Court's taking this case is that the decisions here in the U.S. Court of Appeals and District Court ignored and refused to examine what the petitioner alleged was an essential part of the abuse of the processes of the court and in doing so refused to consider one of the oldest points established in our law, namely that the death of a principal terminates the agency of an agent, particularly when that relationship involves an

attorney as the agent. *Hunt v. Rousmaneir's Administrators*, 21 U.S. 174, 5 L.Ed. 589, 8 Wheat 174 (1823) (Opinion per Marshall, C.J.). It is an integral part of the complaint of the petitioner of abuses of the court processes in this case that the respondent Government Employees Insurance Company (GEICO) extensively represented that it was representing a dead client, initially even misrepresenting that the man was alive when he was not and then continuing to purport to represent him to the damage of the petitioner for over a year when he was in fact dead. This abuse is integral to the abuse of the substitution processes of a court under the procedures of Rule 25 and this is part of what this Court needs to clarify for courts to properly and consistently apply Rule 25. See *Atkins v. City of Chicago*, 547 F.3d 869 872, 874 (7th Cir.2008).

As a final factor that petitioner urges the Court to take into consideration in deciding upon granting this petition the petitioner points to the fact that he is an individual and one who was badly and permanently damaged in the rear-end auto collision that led to these collateral events constituting, as he alleges, the abuses of process and violation of obligations owed to him under the District of Columbia Consumer Protection Procedures Act. D.C. Code § 28-3901 *et seq.* See *Athridge v. Aetna Casualty & Surety Co.*, 351 F.3d 1166, 1176 (D.C.Cir.2003). While it is not the function of this Court to act as a Court of Appeals assuring individual justice it is important to the rule of law that it is responsible for preserving that when there is an enormous imbalance between an individual and his rights on the one hand and, on the other hand, an

enormously politically and economically powerful entity such as the respondent GEICO in this instance, one whose controlling figure is an enormous contributor to those in power, that in the nation's capital in a time of rising concern over the ignoring of ordinary citizens due to an elitist concept of the law that it be made clear that the issues discussed will not be ignored. The rule of law demands no less.



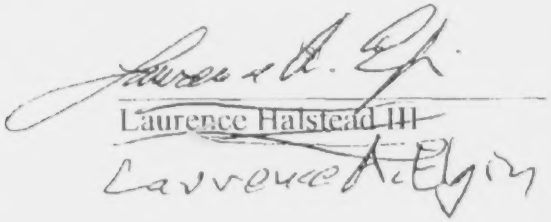
CERTIFICATE OF SERVICE

I hereby certify that I have caused the Petitioner's PETITION FOR WRIT OF CERTIORARI to be served by United States mail, postage prepaid, this 5th day of August, 2010 upon:

Michael J. Budow, Esquire
Allan A. Noble, Esquire
7315 Wisconsin Avenue, Suite 500 West
Bethesda, Maryland 20814

and

Wade J. Gallagher, Esquire
Martell, Donnelly, Grimaldi & Gallagher, P.C.
1900 L Street, NW
Suite 401
Washington, D.C. 20036



Laurence Halstead III

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APPENDIX

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TABLE OF CONTENTS
(APPENDIX)

Table Contents	i
Order, USCA-DC, December 17, 2009	Appx 01
Order, USDC-DC, June 15, 2009	Appx 03
Memorandum Opinion, USDC-DC, June 15, 2009	Appx 04
Order, USCA-DC, May 7, 2009	Appx 06
Order, USCA-DC, May 7, 2009 (*en banc*)	Appx 08
Complaint, USDC-DC, Dec. 17, 2008	Appx 10
Release, Petitioner to Respondents, Oct. 8, 2008	Appx 35

Relevant Rules and Statutes

District of Columbia Code, § 12-102. Substitution of parties	Appx A-01
Federal Rules of Civil Procedure, Rule 25	Appx A-02
District of Columbia Consumer Protection Act	Appx A-03

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 09-7076 SEPTEMBER TERM 2009

1:08-cv-01778 JR

Filed on: December 17, 2009

LAURENCE HALSTEAD III,

Appellant,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY (GEICO) also known as GEICO Financial Services Company, Inc., Et al.,

Appellees.

BEFORE: Ginsburg, Brown, Griffith, Circuit Judges

ORDER

Upon consideration of the motions for summary affirmance and the opposition thereto, it is

ORDERED that the motion for summary affirmance be Granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers Watchdog, Inc, v Stanley, 817 F.2d 294, (D.C. Cir. 1987) (per curiam). With respect to the Appellant's abuse of process claim, he did not

allege a "perversion " of the court processes to accomplish some end which the process was not intended by law to accomplish, or which compels the party against whom it has been used to do some collateral thing which he could not legally and regularly be compelled to do." Neumann v. Vidal, 710 F2d 856, 860 (D.C. Cir. 1983)(quoting Hall v Field Enterprises, Inc., 94 A.2d 478, 481 (D.C. 1953)). Appellant has not presented on appeal arguments in support of his malicious prosecution or breach of contract claims, and thus has waived them. United States v. Taylor, 339 F.3d 973, 977 (D.C. Cir. 2003). Finally, appellant failed to state a claim under the D.C. Consumer Protection Procedures Act, D.C. Code § 28-3904, because the acts and statements to which he objects "were relate[d] to an advocate's traditional presentation of his client's side in litigation." Athridge v. Aetna Casualty & Surety Co., 351 F.3d 1166, 1169 (D.C. Cir. 2003).

Pursuant to D.C. Rule 36 this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

PER CURIAM

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 8-1778 (JR)

LAURENCE HALSTEAD III,
Plaintiff,

v

GOVERNMENT EMPLOYEES INSURANCE COMPANY (GEICO), *et al.*,
Defendants.

ORDER

For the reasons set forth in the accompanying memorandum, the motions to dismiss of defendants GEICO [8] and Wade J. Gallagher, et al. 12] are **granted**.

This is a final, appealable order.

JAMES ROBERTSON
United States District Judge

(court stamped June 15, 2009)

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 08-1778 (JR)

LAURENCE HALSTEAD III,
Plaintiff,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY (GEICO), *et al.*,
Defendants.

MEMORANDUM

Although the complaint in this case says it is for "breach of contract, malicious breach of contract, breach of the covenant of fair dealing, violation of consumer protection and for abuse of process, malicious abuse of process and misuse of process," it is really an attempt to collect more money than the $100,000 the plaintiff accepted in settlement of claims he made years ago after he suffered injuries in an automobile accident. The suit is entirely without merit. Plaintiff's assertion of third party rights under his passenger's insurance policy (see Complaint, para. 85) is muddled, to say the least. The only "contract" that plaintiff had was an agreement to settle, and that agreement was honored. The defendants neither initiated nor

served process, so they could not have "abused," "maliciously abused," or "misused" process. Plaintiff has cited no authority, nor have we found any, for the proposition that either the covenant of fair dealing or the consumer protection statute has ny application to the settlement of tort cases, particularly where, as here, all the litigants were represented by competent counsel. Plaintiff settled and dismissed with prejudice the same claim against GEICO that he has attempted to repackage here, executing a general release of GEICO. The conflict of interest claim he asserts *en passant* against the lawyers who represented GEICO in Superior Court is particularly unmeritorious; counsel were not responsible for the fact (surely not an unusual fact in Washington, D.C.) that the underinsured motorist coverage on the vehicle plaintiff was driving and the coverage on the vehicle driven by the tortfeasor was all written by GEICO. If plaintiff's conflict of interest argument were accepted, it would mean that in every case in which GEICO has insured both the plaintiff and the defendant it would have to be unrepresented on one side or another of the "v." Plaintiff has failed to state a claim upon which relief can be granted. The defendants' motions to dismiss will be granted.

JAMES ROBERTSON
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 09-7076 SEPTEMBER TERM 2009

1:08-cv-01778 JR

Filed on: May 7, 2010

LAURENCE HALSTEAD III,

Appellant,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY (GEICO) also known as GEICO Financial Services Company, Inc., Et al.,

Appellees.

BEFORE: Ginsburg, Brown, Griffith, Circuit Judges

ORDER

Upon consideration of the petition for rehearing and the motion to publish opinion, it is

ORDERED that the motion to publish be denied. See D.C. Cir. Rule 36(f). (motions to publish "are not favored and will be granted only for compelling reasons"); see also D.C. Circuit Handbook of Practice and Internal Procedures 53 (2009).

Although not published under D.C. Circuit Rule 36, the order is available to the public. See id.: D.C. Circ. Rule 36(e)(1).

PER CURIAM

FOR THE COURT:

Mark J. Langer, Clerk

By: /s/

Jennifer M. Clark

Deputy Clerk/LD

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 09-7076 SEPTEMBER TERM 2009

1:08-cv-01778 JR

Filed on: May 7, 2010

LAURENCE HALSTEAD III,
Appellant,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY (GEICO) also known as GEICO Financial Services Company, Inc., Et al.,
Appellees.

BEFORE: Sentelle, Chief Judge, and Ginsburg, Henderson, Rogers, * Tatel, Garland, Brown, Griffith, and Kavanaugh, Circuit Judges

ORDER

Upon consideration of the petition for rehearing en banc, and the absence of a request by any member of the court for a vote, it is

ORDERED that the petition be denied.

PER CURIAM

FOR THE COURT:
Mark J. Langer, Clerk
By: */s/*
Jennifer M. Clark
Deputy Clerk/LD

Circuit Judge Rogers did not participate in this matter.

In The UNITED STATES DISTRICT COURT

For the District of Columbia

Case No. ____

JURY TRIAL DEMANDED

LAURENCE HALSTEAD III, for himself

817 North Lincoln Street

Arlington, VA 22201

Plaintiff,

v.

GOVERNMENT EMPLOYEES INSURANCE COMPANY (GEICO)

a/k/a in the District of Columbia as

GEICO FINANCIAL SERVICES COMPANY

Corporate headquarters

5260 Western Avenue

Chevy Chase, MD 20815

D.C. address

One GEICO Plaza

Washington, D. C. 20076

and

WADE J. GALLAGHER
9 North Adams Street
Rockville, MD 20850
and

MARTELL, DONNELLY, GRIMALDI
& GALLAGHER, P.C.
a Maryland Professional Corporation
9 North Adams Street
Rockville, MD 20850

Defendants.

COMPLAINT FOR BREACH OF CONTRACT, MALICIOUS BREACH OF CONTRACT, BREACH OF THE COVENANT OF FAIR DEALING, VIOLATION OF CONSUMER PROTECTION AND FOR ABUSE OF PROCESS, MALICIOUS ABUSE OF PROCESS AND MALICIOUS USE OF PROCESS

I. PARTIES

The plaintiff, Laurence Halstead III is an individual resident of Arlington, Virginia, residing at the above address. He was at all times pertinent hereto an adult citizen of the United States and the

Commonwealth of Virginia residing at that same address. He brings this complaint on his own behalf until he can get an attorney.

1. The defendant GEICO is one of the nation's largest auto insurance companies. Founded in the District of Columbia in 1936 to market insurance to government employees and members of the military it now sells auto insurance to the general public and has moved its headquarters to nearby suburban Maryland at the above address. It has incorporations in Delaware, registers its investment services company in D.C. and is regulated as to its rates with the District of Columbia, Maryland and Virginia. It markets heavily to residents of the District of Columbia Metropolitan area.

2. The defendant Wade J. Gallagher was an attorney for GEICO and, until his death, for an insured of GEICO named Henry Hiawatha Barber in the automobile negligence case brought by the plaintiff and ultimately settled in his favor which is the subject of the abuses and misuses complained of in the present suit.

3. The defendant Martell, Donnelly, Grimaldi & Gallagher, P.C. was at all pertinent times a law firm practicing in the D. C. courts but headquartered in Rockville, Maryland, of which the defendant Wade J. Gallagher was a member. He was and is the managing partner or a managing partner of the firm.

II. JURISDICTION AND VENUE

4. The plaintiff is a resident of Virginia.

5. The defendant GEICO is one of many interrelated Delaware corporations shows headquarters are in Maryland.

6. The defendant Wade J. Gallagher is a resident of Maryland who lives and works there and practices extensively in the courts in the District of Columbia.

7. The defendant Martell, Donnelly, Grimaldi & Gallagher is a Maryland professional corporation whose headquarters are in Maryland whose members practice extensively in the courts of the District of Columbia.

8. The damages claimed in this suit exceed two hundred thousand dollars ($200,000.00).

9. Therefore this Court has diversity jurisdiction under 28 U.S.C. § 1332 and subsection (d) thereof.

10. Venue is in this court because the underlying action in court out of which all the causes of action of the plaintiff arose occurred in a suit filed by the plaintiff in the Superior Court of the District of Columbia and all actions complained of took place in that suit or in connection with it in the District of Columbia.

III. BASE FACTS

11. On October 12, 2000, the plaintiff, who at the time was a licensed Virginia driver, was driving a vehicle in the District of Columbia.

12. He and the vehicle he was driving were standing still in traffic at the traffic signal at Reservoir

and Canal Roads NW, headed south, bound from Georgetown Hospital southbound to then go across town to Capitol Hill.

13. The vehicle that the plaintiff was driving belonged to his long time friend, Patricia Knight, with whom he resided. She had asked him to drive her from an appointment that she had at Georgetown

Hospital back to her office on Capitol Hill at the United States Senate.

14. Ms. Knight was thus a front seat passenger in her car that the plaintiff was driving at the time.

15. As the plaintiff and his friend Ms. Knight as the passenger were sitting in her car at the said intersection waiting for the traffic signal and the traffic ahead of them to move so that they might proceed in a southerly direction, a car traveling at a high rate of speed approached them from the rear and accelerated into the rear of Ms. Knight's car that the plaintiff was driving, striking it a forceful blow which jarred both the plaintiff and Ms. Knight.

16. As a direct result of the collision Ms. Knight sustained knee injury.

17. As a direct result of the collision the plaintiff sustained serious injury to his back and spine, particularly serious upper disk injury.

18. In addition also as a direct result of the collision the plaintiff experienced the triggering of latent condition of multiple sclerosis, (MS) of which he had previously not been aware, that affected his

spine and brain causing him serious and permanent disability with which he will now have to live for the rest of his life.

19. At the time of the collision also the plaintiff had purchased a large building in Weatherly, Pennsylvania which he intended to move into and rehab into HUD Section 8 units in order to increase its value.

20. In remodeling the said building the plaintiff planned to use his own considerable trade skills which he had honed over many years of owning and rehabilitating buildings and to employ a pick-up crew locally in Weatherly for the purpose, which would work under his supervision so that he would not need much expensive professional assistance.

21. He had a partner in the project, Paul McDonald, a person experienced in such projects and in mortgage financing and they had drawn up the plans for the project, obtained financing based on the building and the plans and were ready to proceed.

This building was the plaintiff's principal and only business asset and his capital was entirely tied up in it.

22. As a direct result of the injuries that the plaintiff received in the collision in question the plaintiff was unable to proceed with this project in that he had been an unusually strong and healthy and fit and athletic individual skilled in the building and associated trades who had demonstrated an ability to complete such projects with relatively minor assistance and as a result of the collision he became unable to perform any such work and could barely lift twenty pounds ever again and will not be able to do such work or any lifting ever again.

23. As a result of the collision and the plaintiff's inability to proceed with the Weatherly project his economic damages resulting from the Weatherly project have come to exceed a million dollars.

24. As a direct result of the collision in question the medical costs for the plaintiff, present and future, are and will be in excess of five hundred thousand dollars.

25. In addition the plaintiff as a direct result of the collision in question the plaintiff is permanently disabled in excess of 90% of his former physical capabilities and the myelin sheathing of

the nerves of his spine and brain are being eaten away in such manner as the rate of deterioration can only be slowed but never cured.

26. In addition, also as a direct result the plaintiff is and always will experience emotional distress and suffering, mental deterioration and loss of acuity of thinking and of vision, spells of blindness and has also experienced great pain and suffering constantly and will for the rest of his life so experience pain and suffering, loss of ability to focus and concentrate and mental confusion.

27. The car that struck the plaintiff and the car he was driving on that day in October of 2000 at the intersection of Canal and Reservoir Roads NW was being driven at the time by Henry Hiawatha Barber and it was Mr. Barber who, depressing the accelerator in the car he was driving rather than the brake, drove into the rear of the car being driven by the plaintiff, Laurence Halstead III.

28. At that time the car that Henry Hiawatha Barber was driving and/or Mr. Barber himself were covered by and had automobile insurance from the defendant GEICO that was in a

primary coverage amount of one hundred thousand dollars ($100,000).

29. The car that the plaintiff Laurence Halstead III was driving, that belonged to his friend Patricia Knight, was covered and Ms. Knight was covered by an insurance policy also issued by the defendant GEICO with a coverage amount of three hundred thousand dollars ($300,000.00).

30. The insurance contract that Patricia Knight had entered with the defendant GEICO provided coverage for any licensed driver driving Patricia Knight's car with Patricia Knight's permission in its amount of three hundred thousand dollars ($300,000.00).

31. The plaintiff regularly and often drove Patricia Knight's car and on the occasion of the collision in question the plaintiff was driving the car of Patricia Knight with Patricia Knight's permission to take her from a medical appointment at Georgetown Medical Center to Patricia Knight's office on Capitol Hill.

32. The contract of insurance that Patricia Knight had with the defendant GEICO at the time of the collision in question had coverage for any

collision that was the fault of another driver and that injured a guest driving Patricia Knight's car with Patricia Knight's permission that would pay any party driving or riding in Patricia Knight's car for any damages such a person received in excess of any primary insurance coverage that might be in effect for any driver who was at fault in such a collision such as Henry Hiawatha Barber was on the occasion in question. This was what is commonly called Underinsured Motorist (UIM) coverage.

33. In this case the primary coverage, as stated, was one hundred thousand dollars ($100,000.00) and the UIM coverage was three hundred thousand dollars ($300,000.00) an amount which would only be drawn upon after any primary coverage that existed was exhausted.

34. Under the terms of Patricia Knight's contract of insurance with the defendant GEICO the plaintiff was covered for underinsurance purposes on the occasion of the collision in question as a third party beneficiary as fully as if he himself had purchased the insurance with its UIM provision.

The contract of insurance between Patricia Knight and the defendant GEICO was sold to her for use in the District of Columbia and was entered into by GEICO as an entity regulated by and with a strong relationship with the District of Columbia.

35. Patricia Knight, and through her, the plaintiff, were consumers of a service sold by the defendant GEICO as a merchant marketing to and in the District of Columbia and those who live in or regularly work and travel in the District of Columbia.

36. As a result of the collision in question that occurred in the District of Columbia in October of 2000 the plaintiff filed a law suit sounding in negligence against the present defendant GEICO and also against Henry Hiawatha Barber for the plaintiff's injuries and damages in the amount of a million dollars which was during the course of the law suit enlarged to eight million dollars.

37. In that law suit the present defendant GEICO contracted for the services of the defendant Wade J. Gallagher and the defendant law firm, Martell, Donnelly, Grimaldi & Gallagher, P.C., to defend in that suit the striking driver, Henry

Hiawatha Barber and they answered the plaintiff's complaint in the Superior Court for his injuries and damages resulting from the collision in question on behalf of Henry Hiawatha Barber.

38. It is customary in the Superior Court of the District of Columbia, that when an insurance company is contractually liable for UIM coverage that insurance company seeks dismissal of any law suit filed against it at the outset if sued until there is a recovery against the primary coverage and the amount of an award exceeds that primary coverage as it only if that happens that there is liability under the UIM coverage.

39. In the case of the law suit filed by the plaintiff in the Superior Court by the plaintiff, however, when the attorneys for the plaintiff chose to file suit against the present defendant GEICO as the lead defendant instead of waiting to see if the plaintiff obtained a recovery that exceed the primary coverage amount before opposing the plaintiff's claims in that Superior Court suit.

40. The defendant GEICO answered the plaintiff's complaint in the Superior Court and retained its "captive" law firm to represent it in the

plaintiff's Superior Court negligence law suit as if it were a co-equal primary defendant and named witnesses, including an expert witness, to deny the plaintiff's claim in the entirety of that claim rather than just any amount over and above the primary coverage.

41. This was not in accord with the obligation of good faith and fair dealing between the defendant GEICO and the plaintiff as the authorized guest driver and third-party beneficiary of its own insured Patricia Knight or the defendant GEICO's obligation to the plaintiff as a consumer of GEICO services in the District of Columbia.

42. Thus in the Superior Court litigation GEICO represented both Henry Hiawatha Barber and itself in own name from the outset of the litigation.

43. As the litigation proceeded in the Superior Court, at the end of March of 2005, the striking driver of the collision in question, Henry Hiawatha Barber, died.

44. Upon the death of Henry Hiawatha Barber at the end of March of 2005 by virtue of that

death the present defendant Wade J. Gallagher and the present defendant law firm immediately ceased to have any legitimate representation of Mr. Barber.

45. In violation of its obligations to Patricia Knight as its insured and to the plaintiff as a third party beneficiary of its contract with Patricia Knight, the defendant GEICO did not inform the plaintiff or Patricia Knight of the death of Henry Hiawatha Barber and the cessation of the attorney-client relationship between the defendants Wade J. Gallagher and Martell, Donnelly, Grimaldi & Gallagher on the one hand and Henry Hiawatha Barber, on the other hand, for many months.

46. In fact, the defendant GEICO continued to represent falsely through the defendants Wade J. Gallagher and Martell, Donnelly, Grimaldi & Gallagher in the Superior Court proceedings that those two defendants were still representing Henry Hiawatha Barber and that Henry Hiawatha Barber was still alive when in fact he was dead.

47. Late in the evening of October 14, 2005, the defendants Wade J. Gallagher and his

defendant law firm filed late in the evening, after regular business hours, a document that they called a Suggestion of Death that said that Henry Hiawatha Barber had died.

48. They served this document upon the plaintiff, through plaintiff's counsel in that suit, by mail and in fact the counsel for the plaintiff did not receive it for over three days. At that time there was no electronic filing in the Superior Court.

49. At that time there was in effect in the District of Columbia a statute, first enacted by Congress in 1964, that all matters of substitution of parties in litigation in the Superior Court in the event of death or disability are governed by the Federal Rules of Civil Procedure so that such matters are not governed by the Superior Court Rules of Civil Procedure.

50. The defendants Gallagher and his law firm had no authority to file such a document in the name of Henry Hiawatha Barber, as they did. He was dead and they had not been engaged by any heir or representative of any estate of Henry Hiawatha Barber.

51. At that time the United States Court of Appeals had ruled in decision that no suggestion of death such as the document in question purported to be was adequate unless it not only was filed by heirs or a personal representative but that it must also designate who the heirs or personal representative that would be substituted would be and provided information to the opposing party, particularly a plaintiff as to how to contact such heirs or personal representative(s).

52. Thus upon the death of Henry Hiawatha Barber and until a point in the spring of 2007 when a personal representative was appointed to succeed Henry Hiawatha Barber upon the motion of the plaintiff GEICO only represented itself in the Superior Court litigation, albeit with two attorneys, and thus had a duty of good faith and fair dealing toward the plaintiff and a relationship to him as a consumer of its services.

53. At a hearing in the Superior Court proceeding on October 19, 2005, the Superior Court suspended all litigation in the case while it on its own tried to mediate a settlement in the matter, which was attempted in chambers just before Christmas of that year.

54. At the October 19, 2005 hearing the Superior Court judge held that the plaintiff could make another attempt to bring in a key expert on MS, could have a discovery conference and other matters important to the plaintiff's development of his case.

55. In the meantime also the Superior Court granted the plaintiff partial summary judgment on the issue of liability against the defendant Barber, leaving the question of the amount of damages that the plaintiff would receive as the only question for the trier of fact in the case.

56. While the litigation in the Superior Court was suspended the time under the Federal Rule during which a plaintiff must name a substitute party for a defendant if there is an adequate suggestion of death expired.

57. The Superior Court resumed the litigation at a hearing in late March of 2006.

58. At that hearing the defendant GEICO through the defendant Gallagher and his law firm, who, at that point, only represented GEICO announced that it was going to move to dismiss the plaintiff's case in its entirety, not just any amount

over the primary coverage of the then deceased Henry Hiawatha Barber and did so despite the fact that it had had its attorney the defendant Gallagher had no authority to file what he called a Suggestion of Death and that that filing was inadequate and did not provide the information it was required to provide.

59. The other attorney who was present for defendant GEICO said he would join his fellow GEICO in such a motion.

60. The defendant GEICO then filed such a motion and the plaintiff had to defend against it for several months until it was denied at a hearing in June of 2006 which necessarily took all the plaintiff's efforts since he could have lost his case completely not just any possible amount over the primary coverage.

61. During this time at a hearing the plaintiff informed the Superior Court that his property, his only asset, the building in Pennsylvania, was under attack by the borough and was deteriorating and he would have to bring in an expert to testify about that as well as a medical expert to testify about new cures and treatments for

MS that might be available to him if he could afford them.

62. In June also the Superior Court demanded further briefing and then further suspended litigation until September of 2006.

63. In September of 2006 the Superior Court repeatedly kept postponing any further hearing in the case until, ultimately, just before Christmas of 2006.

64. The Superior Court explained that it did this, suspending litigation further in the meantime, because the judge's wife had been an auto collision in which the driver who struck the judge's wife was insured by the defendant GEICO and the judge had a conflict of interest.

65. In December the judge announced that he and his wife had settled their claim against the defendant GEICO the day before and that therefore there was no more conflict of interest.

66. At that point the Superior Court decided everything it could against the plaintiff and even on its own denied the plaintiff the discovery conference because it said the plaintiff had taken to long while the court had suspended the litigation and the litigation was delayed by GEICO's improper

motion and inadequate and unauthorized suggestion of death.

67. While litigation was suspended by the

68. Superior Court defendant GEICO filed

69. with the Superior Court anyway.

70. As the plaintiff was finally allowed to

71. begin his litigation again in the Superior Court, much damage to himself, his building and his case in the meantime, in March of 2007, plaintiff's counsel in the Superior Court case, through no fault of the your plaintiff.

72. The plaintiff had great trouble finding another attorney to conduct his litigation in the Superior Court. The first substitute attorney he retained, who was from a distinguished legal family, his father being a famous trial lawyer and former U. S. Senator, failed to perform, acted erratically and has to be discharged.

73. After talking to a number of other attorneys the plaintiff finally located yet another attorney, who undertook representing him in the Superior Court.

74. Unfortunately, despite his high reputation, this third attorney did not perform

either. He ignored my instructions, claimed to be designating an expert who had already been designated as an actor and witness (I looked that up on the Internet) and refused to get me the experts I needed or even try to do so despite my instructions despite his promise to me that he would.

75. Ultimately this third attorney put me in a position, through his disobedience of my instructions and his failure to properly attend to my case where I had no choice but to settle my case within the primary coverage.

76. That was after the Superior Court, which it had no authority to do, made me file for substituting Henry Hiawatha Barber's personal representative, his girlfriend, for the dead Mr. Barber.

COUNT I: ABUSE OF PROCESS

77. I repeat and incorporate by reference everything that I have said above.

78. The substitution process was intended to compel the heirs or personal representative of Mr Barber file in the Superior Court to give me the information to make an orderly substitution, not allow GEICO to attempt to destroy or heavily

damage my case, yet that's what defendant GEICO did and it did it without authority of probable causes, filing what it had no probable cause or authority for in an improper filing it falsely called a suggestion of death.

79. It did this after failing to tell me that Barber had died and deceiving me about his death.

80. Then the defendant GEICO filed a motion to dismiss my entire case in the Superior Court. The dismissal procedure was not meant to allow GEICO, which at that point had a good faith obligation to me and only was supposed to be worried about underinsurance, to do such a thing.

81. This was done with malice including attacks by the defendant Gallagher on my attorney verbally that were constant in hearings and at one hearing Gallagher's kicking me.

82. As a result I lost almost 80% of my case's value, had to settle cheap and suffered over a million dollars of damage to my building that would have been preventable, could not explore expensive new cures for my MS and suffered much more deterioration of my health than would have otherwise been the case.

WHEREFORE, I ask for special compensatory damages of 3 million dollars, general damages of a million dollars and punitive damages of 3 million dollars against all the defendants plus any other relief in law or equity that would be just and I ask for counsel fees and expenses.

COUNT II: MALICIOUS USE OF PROCESS

83. I incorporate by reference everything through 81 above.

84. It is all also malicious use of process. WHEREFORE, I ask for the same damages against all defendants in this Count II.

COUNT III; BREACH OF CONTRACT OF GOOD FAITIH AND FAIR DEALING

85. I incorporate everything through 83 above.

86. GEICO had a contract with me as a third party beneficiary and as part of that contract had a duty to deal with me fairly and in good faith but did not do so. WHEREFORE, I ask for the same damages as above in this Count II against GEICO, including punitive damages for the malicious nature of the breach of contract because it was a separate offense as well as a breach. I also ask for triple

damages and attorney's fees against GEICO and punitive damages because I was a consumer of their services under the Consumer Protection Procedures Act.

I DEMAND A JURY

Laurence Halstead III
At the above address
(703) 516 9208

RELEASE IN FULL OF ALL CLAIMS
CLAIM # 000760697.5101-249

I/we, Laurence Halstead Iii, Releasor(s) of 817 North Lincoln Street City of Arlington State Va Being over the age of majority, for and in consideration of a check for the sum of One Hundred Thousand Dollars ($100,000.00), lawful money of the United States of America to me/us in hand paid, the receipt of which is hereby acknowledged, do for myself/ourselves, my/our heirs. executors, administrators, successors and assigns, hereby remise, release, and forever discharge Vylloria A. Evans, Personal Representative or The Estate or Hiawatha W. Barber And GEICO Insurance Company Releasee(s), successors and assigns, and/or his or their associates, heirs, executors and administrators, but no other persons, firms or corporations of and from any and every claim, demand, right or cause of action, of whatever kind or nature, on account of or in any way growing out of any and all personal injuries and consequences thereof: including, but not limited to, all causes of action preserved by the wrongful death statute applicable, any loss of services and consortium, any injuries which may exist but which at this time are unknown and unanticipated and which may develop at some time in the future, all unforeseen developments arising from known injuries, and any and all property damage resulting or to result from an accident that occurred on or about the 12th day of October, 2000, at or near Fox

Hall Road, Washington, DC and especially all liability arising out of said accident including, but not limited to, all liability for contribution and/or indemnity. AS A FURTHER CONSIDERATION FOR THE MAKING OF SAID SETTLEMENT AND PAYMENT, IT IS EXPRESSLY WARRANTED AND AGREED:

(1) That I/we understand fully that this is a final settlement and disposition of the disputes both as to the legal liability for said accident, casualty, or event and as to the nature and extent of the injury, illness, disease and/or damage which I/we have sustained and I/we understand that liability is denied by Vylloria A. Evans, Personal Representative Of The Estate Of Hiawatha W. Barber And

(2) shall control over any other contrary provisions agreed between the Releasor(s) and Releasee(s) herein. That this release and settlement is not to be construed as admission of liability on the part of said Releasee(s); that this release and settlement agreement shall not be used by said releasor(s) or anyone on his behalf as a defense or estoppels in any action which is now pending or may be brought hereafter by said Releasee(s) against said Releasor(s) or his agents and servants, and any claim of whatever kind or nature the Releasee(s) might have or hereafter have arising from said accident is expressly reserved to them.

(2) That I/we do hereby for myself/ourselves, my/our heirs, executors, administrators, successors, assigns and next of kin covenent not to indemnify, or save

harmless the Releasee(s) from any and every claim or demand of every kind or character apart from the claim filed from said accident which may ever be asserted.

(3) That no promise, agreement, statement or representation not herein expressed has been made to or relied upon by me/us and this release contains the entire agreement between the parties.

IN WITNESS WHEREOF, I/we have hereunto set my/our hand and seal this 3rd day of October 2008.

THIS IS A RELEASE IN FULL
((SIGNATURE) /s/ Laurence Halstead
(SIGNATURE) blank
(SIGNATURE) blank

CERTIFICATE OF WITNESSES
We certify that this release was signed in our presence by the above who acknowledged that he/they understood it fully.
WITNESS /s/ Binta Bimua
ADDRESS 3150 N. Washington Blvd., Arlington VA

[Jurat]

For your protection District of Columbia Law requires the following to appear on this form
If you or your parent or guardian have Signed this release without the assistance or guidance of legal counsel, you have the right to rescind this release of

liability.executed within 21 days, of the motor vehicle accident,.provided tbat the inssurance carrier.or otber settling party receives,your written notice of your intent to void the release within14 days of-the date that tbe release was executed, and the written notice is accompanied by any check or settlement proceeds related to the-claim for personal injury tbat had been delivered to the claimant.

For your protection District of Columbia Law requires the following to appear on this form: WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant."

MEMBER NATIONAL INSURANCE CRIME BUREAU

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DISTRICT OF COLUMBIA CODE

§ 12-102. Substitution of parties .

The substitution of parties in civil actions in the United States District Court for the District of Columbia and the Superior Court of the District of Columbia is governed by the Federal Rules of Civil Procedure.

Here is the language of the D.C. Consumer Protection Procedures Act that is relevant:

FEDERAL RULES OF CIVIL PROCEDURE

Rule 25. Substitution of Parties

(a) Death.

(1) Substitution if the Claim Is Not Extinguished.

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

(2) Continuation Among the Remaining Parties.

After a party's death, if the right sought to be enforced survives only to or against the remaining parties, the action does not abate, but proceeds in favor of or against the remaining parties. The death should be noted on the record.

(3) Service.

A motion to substitute, together with a notice of hearing, must be served on the parties as provided in Rule 5 and on nonparties as provided in Rule 4. A statement noting death must be served in the same manner. Service may be made in any judicial district.

DISTRICT OF COLUMBIA. Consumer Protection Procedures Act:

§ 28-3905. Complaint procedures.

* * * * *

(k)(1) A person, whether acting for the interests of itself, its members, or the general public, may bring an action under this chapter in the Superior Court of the District of Columbia seeking relief from the use by any person of a trade practice in violation of a law of the District of Columbia and may recover or obtain the following remedies:

(A) treble damages, or $1,500 per violation, whichever is greater, payable to the consumer;
(B) reasonable attorney's fees;
(C) punitive damages;
(D) an injunction against the use of the unlawful trade practice; (E) in representative actions, additional relief as may be necessary to restore to the consumer money or property, real or personal, which may have been acquired by means of the unlawful trade practice; or (F) any other relief which the court deems proper. (2) The remedies or penalties provided by this chapter are cumulative and in addition to other remedies or penalties provided by law. Nothing in this chapter shall prevent any person who is injured by a trade practice in violation of a law of the District of Columbia within the jurisdiction of the Department

from exercising any right or seeking any remedy to which the person might be entitled or from filing any complaint with any other agency. (3) Any written decision made pursuant to subsection (f) of

this section is admissible as prima facie evidence of the facts stated therein.